

June 4, 2020

Marikae Toye, Co-Chair, Illegal Tobacco Task Force
Massachusetts Department of Revenue
General Counsel's Office, Criminal Investigations Bureau
100 Cambridge St., 8th Floor
Boston, MA 02114

Via: Email.

Re: Ken Williams Illegal Tobacco Task Force Testimony - Supplemental.

Dear Marikae Toye, Co-Chair:

As a person of color and a retired decorated homicide detective from the City of Brockton, I have firsthand experience from the frontlines enforcing criminal laws in the Commonwealth. I participated in numerous collaborative efforts with the ATF and DEA concerning illegal firearms interdiction and drug trafficking. Today, I am recognized by both federal and state courts as an Expert Witness in Police Practices, Use of Force, Video Forensics, and as a Questioned Document Examiner.

I am gravely concerned. Massachusetts has nearly 7 million residents and according to the most recent American Community Survey, the Black population in Massachusetts is 463,796 – at 6.8 percent of the total population of Massachusetts.

Massachusetts decriminalized recreational marijuana possession and use in 2016 after 50 years of criminal laws prohibiting marijuana possession have been proven to have little or no impact on deterring marijuana use. Lawmakers also wrestled with the divisive issue of marijuana and stop-and-frisks in the Black community when it finally decriminalized recreational marijuana. My direct knowledge and experience in Massachusetts involving police-civilian encounters are backed up by numerous sources of data with findings that confirm although the Black population is only 6.8 percent in Massachusetts there are serious racial disparities concerning stops-and-frisks. For instance, researchers from Columbia, Rutgers, and the University of Massachusetts, analyzed 200,000+ encounters between the Boston Police Department (“BPD”) officers and civilians from 2007–2010. It found racial disparities in the BPD’s stop-and-frisks that could not be explained by crime or other non-race factors. Blacks during that period were the subjects of 63.3 percent of police-civilian encounters, although less than a quarter of the city’s population is Black.¹

A recent national study found that Blacks are arrested for marijuana offenses at higher rates than Whites in 90 percent of 700 U.S. counties investigated. In 64 percent of these counties, the

¹ Ending Racist Stops and Frisks, ALCU of Massachusetts (2015).

Black arrest rate for marijuana violations was more than twice the arrest rate for Whites.² Today there is no question that marijuana prohibition caused more harm than the use itself and that prohibition did not work to deter use either. Marijuana prohibition caused 1 in 5 Black men to become incarcerated for low-level offenses despite Whites and Blacks possessing and using marijuana at a similar rate, yet Whites are underrepresented. All of this amounts to 60,000, citizens, behind bars for marijuana offenses in America annually costing taxpayers \$1.2 billion per year.³

As a person of color, I am compelled to express serious professional and personal concerns about what this new law will mean for Massachusetts, particularly in the midst of a pandemic that is changing the structure of society. Without a doubt, marijuana prohibition and law enforcement have eviscerated the Black community by discriminatory stop-and-frisks. State lawmakers continue to ignore these practices, outcomes, and historical harms are the roots of systemic racism in policing. As of June 1st, 2020, Massachusetts became the only state in the nation to make the sale of menthol, mint, and wintergreen tobacco products illegal. This new law grants police officers in the Commonwealth of Massachusetts another tool to justify mere suspicion to conduct stop-and-frisks over a menthol-flavored cigarette. I envision police officers citing a reasonable belief that 80% of African American tobacco smokers prefer menthol-flavored cigarettes as the basis for their increase in stop-and-frisks of Black suspects. Meanwhile, White citizens who use other tobacco cigarettes will not be subjected to similar treatment. This new law, like marijuana prohibition, will not deter menthol-flavored cigarette use but as stop-and-frisks increase over possession of a cigarette, there will be increased anger, pain, and complaints of disparate impact and disparate treatment from members of the Black community against police.

The outcome of Alcohol prohibition laws in 1919 is known. That law caused more traditionally law-abiding White citizens to break laws on a consistent basis for a decade and the unintended consequences *caused* a more cavalier attitude towards the laws in general. Illegalizing menthol tobacco products will have a similar effect, particularly in minority communities.

Prohibition always fuels risk & reward activities that influence criminal enterprises to the point where law enforcement struggles to keep up, despite the unprecedented expansion in terms of new officers and leadership from the FBI down to local police forces. Massachusetts' illegalization of menthol, mint, and wintergreen tobacco will have similar impacts and the state must be prepared to deal with the public safety implications as a matter of public health.

The selective illegalization of menthol, mint, and wintergreen tobacco will not eliminate demand from the local Black consumer. This will be exacerbated by the fact that traditional cigarettes remain legal, creating a dilemma for unprejudiced law enforcement.

² J. Gettman. 2000. United States Marijuana Arrests, Part Two: Racial Differences in Drug Arrests. The NORML Foundation: Washington, DC.

³ Marijuana Arrests and Incarceration in the United States. 1999. The Federation of American Scientists' Drug Policy Analysis Bulletin.

You can comfortably bet that to make menthol illegal the new law offers a host of opportunities to expand already problematic levels of illegal tobacco activities:

1. Tobacco traffickers will simply purchase menthol cigarettes and/or other tobacco products from other tax states and sell them in Massachusetts. New Hampshire provides them with a nearby resource to do so. The financial gain of tobacco trafficking is immediately apparent. Legal distributors pay significant taxes on their product, including \$1.01 per pack in federal excise tax; from \$0.17 to \$6.16 per pack in state and local excise taxes; and typically, \$0.60 per pack to the Master Settlement Fund for health care costs incurred by the states because of tobacco use by their citizens.
2. Illegal manufacturing will spring up, creating products with no quality control leading to consumers accessing and using unsafe versions of menthol tobacco products. Menthol flavorings that have not been approved can be added to traditional cigarettes or they can simply use counterfeit tobacco that is manufactured or imported into the United States without any tax payment to be sold at a discounted price to consumers.

Massachusetts relies heavily on excise tax from tobacco sales and law enforcement ultimately relies heavily on funding from tax revenue.

The Massachusetts General Fund is dependent on increased taxes imposed on tobacco resale. In fact, Massachusetts cigarette smokers paid an extra \$285 million from a \$1 per pack hike tax approved in 2013. With that increase, Massachusetts' cigarette tax soared from \$2.51 per pack to \$3.51 per pack, making the tax, at the time, the second-highest rate in the country after New York per pack of 20 cigarettes. The problem? None of that extra cigarette tax revenue was used to educate kids or parents to stop smoking. Most of the cigarette revenue (\$222 million) went to the state's general fund. The remaining \$63 million went to the Commonwealth Care Trust Fund. The Commonwealth Care Trust Fund is used to pay for subsidized health insurance and Medicaid rate increases for those in the state. Furthermore, I can assure you that my brothers in law enforcement will need additional manpower and resources to enforce the new tobacco law. Where will the money for this critical work in public safety come from if not taxes?

In closing, a selective menthol, mint, and wintergreen ban on tobacco in Massachusetts is bad news. It will increase crime, cause small business owned shops to close in communities of color, will lower competition in pricing, and cause consumers to pay more for food, gas, and other goods. It could also cause an increase in community-police complaints about stop-and-frisks based on the color of skin and the mere suspicion of carrying a menthol cigarette. These are unacceptable outcomes.

Sincerely,


Ken Williams
Brockton Police Homicide Detective (Retired)